THE PUBLIC SERVICE COMMISSION LAW OF WISCONSIN

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I am happy to say that we did not need the stimulus of a Jay Gould, a Vanderbilt or a Whitney to enact a public utility law in Wisconsin. There were, however, conditions existing in Wisconsin which justified the enactment of that law, and it may be interesting to notice briefly what those conditions were.

Prior to 1903, the railroads had been paying, in lieu of taxes, a percentage on their gross earnings. Through various political campaigns and before the legislature, there had been agitation for the taxation of railroads on an ad valorem basis. In 1903 such an act was passed. It was claimed at the time that the railroads intended shifting the added tax to the shipper, by increasing the freight rates. Governor LaFollette sent a special message to the legislature of 1903, in addition to his general message, strongly advocating the creation of a railroad commission for the purpose, among others, of preventing the shifting of this added burden of taxation from the railroads to the public. Such a bill was then pending in the assembly but was defeated.

In 1904 the republican party adopted a platform favoring a railroad commission with power to regulate freight and passenger rates. A campaign was made throughout the State—in every assembly and senatorial district—favoring the enactment of such a law, and every member of the legislature was elected upon the direct issue of whether we were or were not to have a railroad commission.

When the legislature met in 1905, a bill was drafted by the senate committee on railroads which was finally enacted into law, creating a railroad commission consisting of three members, to be appointed by the governor, by and with the advice and consent of the senate, and subject to removal by the governor for cause. When one reads the Wisconsin act and the law subsequently passed in New York, he cannot fail to recognize the relation of parent and child between the two.

Our commissioners receive a smaller salary than those in New York, ours receiving an annual salary of $5000 each, while the salary in New York is $15,000 per annum for each commissioner. We have succeeded in getting a first-class commission, as good, I believe, as any in the world. It is my opinion that our salaries are ample. In the east, living conditions are different, salaries are higher, which, with other conditions, probably justifies the difference in salaries in the two States.

The Wisconsin act of 1905 gave the commission jurisdiction over railroad corporations, express companies, car companies, sleeping car companies, freight and freight line companies, and interurban street railroad companies. In 1907, under the administration of Governor Davidson, there were added to the jurisdiction of the commission, telephone, telegraph, gas, electric light, water and power companies, and also urban street car companies.

The Wisconsin commission, therefore, has jurisdiction over more utilities than has the New York commission. As the New York commissioner, Mr. Osborne, has said, their commission has no control at this time over telephone and telegraph companies; neither has it control over water companies.

The control over railroads by the New York commission is similar to ours in many respects. We have, however, several features which they have not, some fundamental, others possibly not. Our control over gas and electric companies is much stronger than New York. I will endeavor, briefly, to indicate the differences in the two laws.

The Wisconsin act provides for a valuation by the commission of *all* utilities; the New York law does not provide for any valuation. To my mind, it is highly essential in determining a rate, to ascertain first the value of the utility. The commission cannot make a rate so low that the utility cannot receive a return of at least legal interest (6 per cent) upon the value of the utility. It is necessary, therefore, in order to determine intelligently what rate should be made, to determine first the value of the utility. Under the act of 1907, the commission is to value only such property of the utility as is "actually used and useful for the convenience of the public." If a utility has some property which is not actually used and useful for the convenience of the public, it should not receive a return upon its value, and under the act of 1907, the commission, in making a valuation, would not value that piece of property.

In Wisconsin a uniform system of accounting is mandatory; in

New York it is permissive. In Wisconsin it is "shall;" in New York it is "may."

In addition to a mandatory uniform system of accounting, the Wisconsin act of 1907 provides that the utility shall keep no other books on account than those prescribed or provided by the commission. There was very strenuous opposition to this feature of the law before the legislature. That act also provides that the commission shall audit the books of all utilities; that the utility shall render an annual balance sheet to the commisssion, and, when the commission so requires, the utility shall keep an adequate depreciation account. The commission shall also keep itself informed of all new construction, extensions and additions to the property of the public utility. The reports the utilities must furnish to the commission must show in itemized detail

the depreciation per unit, the salaries and wages separately per unit, legal expenses per unit, taxes and rentals separately per unit, the receipt from residuals, by-products, services or other sales separately per unit, the total and net cost per unit, the gross and net profit per unit, the dividends and interest per unit, surplus or reserve per unit, the prices per unit paid by consumers, and, in addition, such other items, whether of a nature similar to those hereinbefore enumerated or otherwise, as the commission may prescribe, in order to show completely and in detail the entire operation of the public utility in furnishing the unit of its product or service to the public.

These accounts and reports are, of course, open to the public and are published by the commission in their annual reports. In the published report of the commission there is to be shown not only the *physical* value of the property, but also the value of *all* the property of the utility.

It seems to me that when you have adequately and definitely provided for a valuation of both the *physical* property and *all* the property of the utility; for a uniform system of accounting and auditing; for a depreciation, new construction and addition account; for a complete report showing the cost, the gross and net profit, etc., per unit and the price paid by the consumer, you have the factors from which, by mathematical calculation, you can ascertain what is a reasonable rate; at least, that is what we tried to accomplish by the act of 1907. This is wholly lacking in the New York law.

In Wisconsin it is provided that *all* public utilities shall file with the commission schedules showing all their rates, while in New York

it is provided that only railroads and street railroads shall file such schedules. I find no provision in the New York act for gas and electric companies to file any schedules of rates.

In Wisconsin the rendering of any service free, or at a greater or less rate than that named in the published schedule, is punishable by a heavy fine. In New York, departure from schedules, discriminations, rebates, etc., are limited to railways and street railways. There is no such provision covering gas and electric companies; neither is it provided that discrimination shall be ground for complaint against railroads or street railroads.

In Wisconsin it is provided that *all* utilities shall furnish adequate service at reasonable rates. I find no mandatory injunction in the New York law in this regard as to gas and electric companies.

In Wisconsin any mercantile, agricultural or manufacturing society, or any body politic or municipal organization, and as to railroads, street railroads, express and telegraph companies any person, and as to other utilities any twenty-five persons, may make complaint that any rate is unreasonable or unjustly discriminatory, or that any service is inadequate or cannot be obtained. In New York, as to railways and street railways, only persons *aggrieved* may make complaint, and as to gas and electric companies, a municipality or a certain number of *customers* may make complaint. In Wisconsin we do not limit complaint to customers or those who are aggrieved, but, on the contrary, provide that the absence of direct damage to the complainant shall not be sufficient cause to warrant the commission in dismissing the complaint.

The Wisconsin act, unlike New York, provides that the utilities may make complaint to the commission as to any matter affecting it, with like effect as though made by any other person against it.

If the utility does not remedy the thing complained of, here, as well as in New York, the matter is investigated by the commission. Oftentimes an investigation will develop sufficient facts to warrant the commission in believing that no hearing ought to be ordered or it will convince the utility and the matter will be remedied without the necessity of a formal hearing.

If, however, after investigation, the commission is satisfied that a hearing should be had, they may order a hearing upon ten days' notice, and if, upon such hearing, any rate is found to be unjust, unreasonable or discriminatory or preferential, the commission determines and declares, and by order fixes, a reasonable rate to be observed

and followed in the future in lieu of that found to be unjust, unreasonable, discriminatory or preferential. In Wisconsin the commission makes the *exact* rate, while in New York the commission makes a *maximum* rate.

The thing that impresses me regarding the maximum rate provided by the New York law, especially as to gas and electricity, is this. The New York law, not providing for any schedule of rates for gas and electricity, and not being mandatory that gas and electric companies shall furnish an adequate service at reasonable rates, and there being no penalty provided for a discrimination in such rates, I should judge a maximum rate in practice would be found to be rather inefficacious, for the reason that, after the commission has fixed a maximum rate, one customer may be charged the maximum rate, another may be charged any rate not exceeding the maximum rate, and the third may be given free service, and yet there be no violation of the law. Such a thing is impossible under the Wisconsin act. I notice the commissioner from New York said that they expect, in the future, to strengthen their gas and electric law in that State.

Under the act of 1907, if the commission, after investigation finds that any rate or service is unjust, unreasonable, insufficient, discriminatory or preferential, or otherwise in violation of any of the provisions of the act, the commission shall order the utility to pay in to the State treasury, within twenty days, the expense incurred by the commission upon such investigation.

In Wisconsin all orders of the commission go into force and become effective twenty days after they are promulgated, unless the commission shall otherwise order, and all orders of the commission are made *prima facie* lawful and reasonable.

If any utility or any person in interest is dissatisfied with any order of the commission, they may, within ninety days, begin an action in the circuit court for Dane county (the county in which the capitol and the commission are located) against the commission as defendant, to vacate and set aside such order. There has been but one action begun to set aside an order of the commission in the two and one-half years of its existence, and the order of the commission was upheld by the courts.

No injunction shall issue suspending or staying any order of the commission except upon application to the court, notice to the comsion and hearing.

The court review, from this point on, is unique in some particu-

lars. The Interstate Commerce Commission found that railroads will not present all their evidence to the commission, but will reserve the presentation thereof in the first instance to the court. The result is that the commission has no chance of passing on all the facts, and the court oftentimes reverses the commission on evidence which was never presented to the commission. We have, I think, effectually guarded against this practice in Wisconsin by providing that if, upon the trial of any action,

evidence shall be introduced by the plaintiff which is found by the court to be different from that offered upon the hearing before the commission or additional thereto, the court, before proceeding to render judgment, unless the parties to such action stipulate in writing to the contrary, shall transmit a copy of such evidence to the commission and shall stay further proceedings in said action for fifteen days from the date of such transmission. Upon the receipt of such evidence, the commission shall consider the same and may alter, modify, amend or rescind its order * * * and shall report its action thereon to said court within ten days from the receipt of such evidence. If the commission shall rescind its order complained of, the action shall be dismissed; if it shall alter, modify or amend the same, such altered, modified or amended order shall take the place of the original order complained of, and judgment shall be rendered thereon as though made by the commission in the first instance. If the original order shall not be rescinded or changed by the commission, judgment shall be rendered upon such original order.

The commission is thus placed in a position where it passes on all the testimony offered before the matter comes finally before the court for decision. This will have the effect of making every utility present to the commission, in the first instance, all the testimony it has on the subject.

It is impossible for the State to deal with franchises, stocks, bonds or other similar matters of a corporation that is not a creature of that State. To obviate this difficulty, it is provided by the Wisconsin act of 1907 that

no license, permit or franchise to own, operate, manage or control any plant or equipment for the production, transmission, delivery or furnishing of heat, light, water or power, shall be hereafter granted or transferred except to a corporation duly organized under the laws of the State of Wisconsin.

It is further provided that every license, permit or franchise hereafter granted to any such public utility shall have the effect of an indeterminate permit. The term "indeterminate permit" is defined

as meaning and embracing every grant, directly or indirectly, from the State to any corporation, company, individual, association, or their lessees or trustees or receivers, of the power, right or privilege to own, operate, manage or control any plant or equipment within the State for the production, transmission, delivery or furnishing of heat, light, water or power, either directly or indirectly to or for the public, which shall continue in force until such time as the municipality shall exercise its option to purchase, as provided by the act, or until it shall otherwise terminate according to law.

Every indeterminate permit shall be

subject to the provision that the municipality in which the major part of its property is situated, may purchase the property of such public utility actually used and useful for the convenience of the public at any time, paying therefor just compensation, to be determined by the commission, and according to the terms and conditions fixed by the commission.

Any public utility, being at the time a corporation under the laws of the State of Wisconsin, and operating under an existing license, permit or franchise, upon the filing at any time prior to the expiration of such license, permit or franchise, of a written declaration that it surrenders such license, permit or franchise, shall, by operation of law, receive in lieu thereof, an indeterminate permit, as provided by the act.

So long as a utility furnishes adequate service at reasonable rates, it should have not only the privilege of continuing in business indeterminately, but should also continue in business without competition, and the act provides not only that these permits should be indeterminate, but that no other license, permit or franchise shall be granted in any municipality where there is in operation, under an indeterminate permit, a public utility engaged in a similar service, before first securing from the commission a declaration, after public hearing, that public convenience and necessity require such second public utility.

It is also provided by the act of 1907 that every public utility having conduits, subways, poles or other equipment on or over any street or highway, shall, for reasonable compensation to be determined by the commission, permit the use of the same by any other public utility, whenever public convenience and necessity require such use, and the same will not result in irreparable injury to the owner or other users of said equipment, nor in any substantial detriment to the services to be rendered by such owners and other users.

The act also provides that any public utility may enter into any reasonable arrangement with its customers or consumers or employees for the division or distribution of its surplus profits, or for a sliding scale of charges, or any other financial device that may be practicable and advantageous to the parties interested. But no such arrangement or device shall be lawful until it shall be found by the commission to be reasonable and just and not inconsistent with the provisions of the act, and shall always be under the supervision and regulation of the commission.

Believing that as much power should be left with the municipal councils as possible, it is provided that every municipal council shall have power: (1) To determine the quality and character of each kind of product or service to be furnished or rendered by any public utility within said municipality, and all other terms and conditions not inconsistent with the act upon which such public utility may be permitted to occupy the streets, highways or other public property within such municipality; (2) to require of any public utility such addition or extensions to its physical plant within said municipality as shall be reasonable, or necessary, and to designate the location and nature thereof and the time within which they must be completed; (3) to provide for a penalty for noncompliance with the provisions of any ordinance or resolution adopted pursuant to the foregoing provisions. If, however, the commission, after complaint and hearing, shall find any such contract, ordinance or other determination made in pursuance thereof to be unreasonable, such contract, ordinance or other determination shall be void.

These are some of the principal differences between the Wisconsin and New York acts.